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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Billed Party Preference	)	CC Docket No. 92-77
for 0+ InterLATA Calls	)	

<u>REPLY OF INTELLICALL, INC.</u>

INTELLICALL, INC.

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August 27, 1992

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SUMMARY

> "A billion dollars here, a billion dollars there, and pretty soon you're talking about real money."
>
> -- Everett McKinley Dirksen

With each passing round of comments on billed party preference ("BPP"), the conceptual benefits of BPP become more illusory and its already astronomical cost estimates grow higher. The record in this comment round provides stark and startling confirmation that first year BPP implementation costs for the nine largest LEC holding companies alone mount up to more than $963 million. Adding AT&T's BPP conversion costs to this figure pushes first year BPP expenditures well over the one billion dollar mark. This figure does not include the massive costs that BPP will force on the rest of the "0" industry, nor does it account for the intangible -- but very real -- costs that BPP will generate in the form of reduced technological innovation and competition, fewer service options and less customer choice.

All BPP costs ultimately will be paid by consumers. The record confirms that they will receive little or nothing in return for their money. Indeed, BPP actually will harm consumers by increasing the cost, confusion and frustration of making a "0" call. Moreover, by devastating the private pay telephone industry, BPP will further harm consumers by limiting pay telephone competition and reducing the locations where pay telephones

are available. BPP also will soak up capital that could be invested in other projects, such as network upgrades or fiber-to-the-home, that would benefit consumers far more than BPP. In short, from a consumer standpoint, BPP is nothing but a boondoggle.

The Commission, too, will pay a steep price if it orders the implementation of BPP. The record demonstrates that implementation cannot be accomplished unless the Commission involves itself in the network and CPE standards-setting process to an unprecedented degree. This kind of government-dictated industrial policy is foreign to the Commission's history, and no commenter has made a case for it here.

Since the record shows that access code dialing already provides consumers the ability to select their carrier of choice in most instances, and will become ubiquitously available in the time it will take to deploy BPP, every penny spent on BPP is a deadweight efficiency loss and an unnecessary burden on ratepayers. Imposing such costs on the economy and on consumers of "0" services makes no sense whatsoever. Therefore, the Commission should terminate the instant rulemaking proceeding and dismiss the Bell Atlantic BPP petition from which it arises.

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I. INTRODUCTION

Intellicall, Inc. ("Intellicall"), by its attorneys, files this reply to comments submitted in response to the Commission's May 1992 Notice of Proposed Rulemaking in the above-captioned proceeding. See Billed Party Preference for 0+ InterLATA Calls, 7 FCC Rcd 3027 (1992) ("Notice"). In the Notice, the Commission asked interested parties to address whether and how local exchange carriers ("LECs") should be required to implement a "billed party preference" ("BPP") system, pursuant to which LECs would be inserted by government fiat into the processing of some but not all interLATA 0+ calls.

This is the third time the Commission has solicited comments on BPP, [1/] and with the passing of each round the "conceptual" benefits of BPP become more illusory and its already astronomical costs grow higher. The current record demonstrates beyond dispute that BPP implementation is unsound public policy that will harm

1/ On two previous occasions the Commission sought comment on Bell Atlantic's 1989 petition for rulemaking to implement BPP. See Notice, 7 FCC Rcd at 3028 n.9.

consumers, competition and technological innovation. Therefore, Intellicall urges the Commission to proceed no further with BPP implementation proposals.

II. DISCUSSION

The Record Demonstrates That BPP Cannot Pass Any Rational Cost/Benefit Analysis

A. BPP Costs Are Astronomically High

The comments demonstrate that turning BPP from concept into reality is an enormously costly and uncertain undertaking that will yield no public interest benefits. This fact alone warrants taking no further action regarding BPP.

The record provides stark and startling confirmation that the price tag on BPP is astonishingly high. First year implementation costs for the nine largest LEC holding companies alone mount up to more than $963 million: Ameritech ($52.5 million); Bell Atlantic ($146 million); Bell South ($153 million); GTE ($84 million); NYNEX ($82.6 million); Pacific/Nevada Bell ($116 million); Southwestern Bell ($127 million) (vendor costs only); Sprint (United Telephone Companies) ($53 million); US West ($149 million). Adding AT&T's BPP conversion costs to these figures pushes first year BPP implementation expenditure well over the one billion dollar mark. 2/ This figure does not include the massive implementation costs that will be incurred by the rest of the LEC and

2/ AT&T estimates that modifying its operations to accommodate BPP would cost, at minimum, $60 million. See AT&T Comments at 12-14.

interexchange carrier ("IXC") industries, nor the costs that will be borne by private pay telephone ("PPT") providers, CPE manufacturers, hotels, motels, universities, hospitals, airports, correctional institutions and other parties in the "0" marketplace.

The record also confirms that the $1 billion-plus BPP cost estimate is very likely a vastly understated figure. As Southwestern Bell ("SWB") notes, the BPP price tag began skyrocketing when vendors were asked to turn previously "soft" planning prices into more concrete estimates. See SWB Comments at 10. This phenomenon caused SWB's BPP cost projections to increase 68 percent just within the period of a few weeks prior to filing its comments, and SWB strongly implied that such estimates would continue to increase significantly in the future. See id.. SWB's emphasis on the "low ball" nature of its cost estimates was echoed by every other party that provided cost figures. See, e.g., Bell Atlantic Comments at 3; Bell South Comments at 9-10.

The Commission should heed warnings that the final BPP price tag will be orders of magnitude higher than initial estimates. History demonstrates unequivocally that skyrocketing expenditures, far exceeding initial estimates, are the rule whenever the government orders relatively undefined but complex technology to be developed and implemented. 3/ The B-1 and Stealth bomber projects

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3/ See O. Williamson, "The Economics of Defense Contracting: Incentives and Performance," in R. McKean, ed., Issues In Defense Economics (1967); see also F.M. Scherer, The Weapons Acquisition Process (1964).

are just two examples of this phenomenon. Thus, actual BPP implementation costs will surely be far higher than the $1 billion-plus estimates currently in the record.

B. The Scope Of BPP Implementation Is Rivaled Only By The Bell System Divestiture, And Will Be Similarly Disruptive

There is no reason to doubt the cost estimates in the record. All commenters agree that BPP implementation will require network reconfigurations and equipment modifications on a scale rivaled only by the Bell System divestiture. Just a partial list of the steps various commenters conclude are necessary to implement BPP illuminates the massive scope of this effort:

- OSS7 development and deployment at all end offices.
- Revise already deployed SS7 capability to accommodate BPP.
- Develop/deploy Automated Alternate Billing Service functionality at all necessary locations.
- Modify existing LEC and IXC switches to accommodate BPP.
- Purchase/install additional TOPS switches.
- Modify LIDB system.
- Modify LIDB support system.
- Develop/install software needed to allow LIDB screening and handling of 14-digit calling cards, commercial credit cards and foreign-issued telephone cards.
- Expand LEC Operator Facilities & hire/train new operators.

- Rearrange all IXC interoffice trunking facilities.
- Modify all IXC and PPT provider operating systems.
- Reissue all non-AT&T and non-LEC calling cards.
- Incur presubscription balloting and marketing expenses.
- Modify all CPE capable of "dialing around" BPP.

This partial list of the steps some commenters believe are necessary to make BPP a reality provides only a glimpse at the total scope of the BPP implementation effort. Some of the technology on which BPP depends has not even been invented yet. See, e.g., USTA Comments at 7. Therefore, companies necessarily will be incurring costs and expending efforts to an extent that cannot be estimated precisely today.

It is preposterous to think that network changes of this magnitude can be accomplished without negatively impacting and confusing the very consumers that the changes are purported to benefit. Divestiture proved that such impacts cannot be avoided during the course of major network modifications. And it does no disservice to the men and women who implemented the divestiture to note that, unlike the case with BPP, the success of their efforts did not depend on new technological developments and network/CPE modifications to the degree that BPP implementation will require. Here, in contrast, the record shows that BPP implementation cannot even get out of the starting blocks until new network signaling and network interfaces are developed. No one is sure this can be accomplished in a timely manner, or can predict with confidence that the new technologies will function as intended once installed in the network. See id.; see also NYCOM and AMNEX Comments at 18-20. It is almost a certainty that calls will be lost, routed improperly or delayed. Consumers will experience frustration, and just as occurred during divestiture, they likely will be calling their elected representatives, demanding to know who in government is responsible for once again disrupting telephone service -- and why.

Any Commission that orders BPP implementation must be ready to respond to such questions, and the existing record provides no obvious answers. To the contrary, the record puts the lie to claims that BPP will provide consumers an easy means of selecting their preferred 0+ carrier. As shown beyond dispute, BPP will inject confusion and delay into every 0+ call, and will reduce consumers' choice of services and service providers. See, e.g., NYNEX Comments at 15-16 and American Hotel & Motel Association Comments at 9-10 (less competition); CompTel Comments at 13-19 (massive customer confusion); Bell South Comments at 13-16 (longer call processing time and required use of two operators on every call); NYCOM and AMNEX Comments (new services will be curtailed). Moreover, consumers already can reach their preferred carrier in most instances, [4/] and one commenter showed that the "billed party" already controls carrier selection on nearly 90 percent of all interLATA "0" calls. See AT&T Comments at 7-8. Against this background, it is no overstatement to say that BPP will provide consumers with zero benefit and, in fact, will affirmatively harm them. [5/]

The public interest is not well served by implementing a system that harms consumers, provides zero benefits and will cost more than one billion dollars to implement in the first year alone. The wildly unbalanced BPP cost/benefit equation has sobered up many former BPP proponents to the realization that BPP is bad public policy. See, e.g., NYNEX Comments at (ii); Bell South Comments at 3-7; see also US West Comments at 2-3. Indeed, when viewed as a whole, the record demonstrates overwhelming and

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4/ The Commission recently accelerated the arrival of nearly ubiquitous 10XXX access code dialing availability by ordering LECs to provide blocking and screening services to PPT providers, thereby helping clear the way for such providers to unblock the 10XXX dialing convention. See Policy and Rules Regarding Operator Service Providers, CC Docket No. 91-35, order on reconsideration, released July 10, 1992. This action represents a welcome and long overdue attempt to address the problem that led many 0+ market participants to block 10XXX in the first place: massive and widespread financial losses from fraudulent 0+ calling.

5/ LEC comments underscore the fact that BPP costs far exceed any market demand for this service. See, e.g., NYNEX Comments at 16 ("The initial implementation costs and recurring expenses associated with billed party preference would simply make it uneconomical as a new service."); GTE Comments at 12 ("the costs and resultant per call charge for BPP may simply be too high to sustain in the market."). The record also demonstrates the LECs' belief that consumers will gladly dial extra access code digits in order to avoid BPP charges. See, e.g., GTE Comments at 12. Finally, it is telling that not a single consumer group filed comments supporting BPP implementation.

across-the board opposition to BPP from all but a few participants in the operator services marketplace. The Commission should take note of this opposition to BPP from those on the "front lines" of the "0" marketplace and dispense with any further consideration of BPP.

C. BPP Is Industrial Policy Run Wild

The handful of commenters who still support BPP offer no blueprint for obtaining the theoretical benefits of the BPP concept without burdening the public with tremendous costs. See, e.g., Sprint Comments at 28 ("The Benefits Of Billed Party Preference Are Not Available Through An Alternative, Less Costly Technology"). Such commenters recognize that BPP cannot be implemented without massive FCC regulatory intervention. The Commission should reject their calls for a "0" industrial policy and adhere to its traditional commitment to free market principles.

There can be no doubt that adopting the regulatory prescriptions identified in the record as necessary for successful BPP implementation would require the Commission to involve itself with technical network and CPE operations to an unprecedented degree. The record is littered with requests for the Commission to prescribe BPP service standards, see Sprint Comments at 19, CPE operating standards, see GTE Comments at 7, and even the specific hardware used to provision BPP, see MessagePhone Comments at 14-22. Moreover, one commenter makes a not unreasonable case that

BPP implementation would require the Commission to prescribe uniform network technical standards regarding the dialing of digits, permissible dial-ahead speeds, the texts of voice prompts and all facets of the various tones employed in network operations for call processing purposes. See Pilgrim Telephone Comments at 8-11.

The problem, of course, is that the Commission traditionally has been exceptionally reluctant to prescribe technical network standards. See Investigation into the Quality of Equal Access Service, RM 5196, FCC 86-248 Mimeo No. 36689, released May 23, 1986. Rather, it is the Commission's policy to allow each carrier's management to make equipment and network operation decisions in the first instance, which are thereafter subject to Commission examination to ensure that the carrier's resulting service offerings (as oppose to equipment and technical standards) are consistent with the requirements of the Communications Act. See Southwestern Bell Telephone Company, 6 FCC Rcd 3760, 3773-74 (1991).

The basis for this policy is obvious. The Commission is not well positioned, equipped or inclined to dictate the technical aspects of any carrier's operations. See, e.g., Policy and Rules Concerning Rates For Dominant Carriers, 3 FCC Rcd 3195, 3224 (1988) ("this Commission cannot micromanage the business operations of every. . .carrier"). Moreover, no commission would want to. The regulatory process is designed for the promulgation of broad policies. Such a process simply cannot respond quickly enough to rapidly changing technological developments in telecommunications equipment and network design. Attempts to dictate standards would literally freeze particular technologies in place and actually discourage technological development. This result is exactly the opposite of the Commission's traditional policy toward technological development, and is directly contrary to the requirements of the Communications Act. See 47 U.S.C. § 157.

No rational purpose would be served by ignoring these statutory requirements and abandoning the Commission's traditional policy concerning equipment and network technical standards. Certainly, no commenter has made a case that a BPP industrial policy is preferable to continued reliance on market forces as a determinant of "0" technology and service development. Requests for such an industrial policy should be rejected out of hand.

Such requests are particularly deserving of rejection where, as here, their adoption would severely undermine the viability of an entire industry segment. The record leaves no room to doubt that BPP will devastate the PPT industry. [6/] In addition to generating untold millions of dollars in stranded investment and other financial losses, destruction of the PPT industry will reduce the competitive forces and technological innovations that increasingly are the hallmarks of PPT operations.

6/ See Intellicall Comments at 17-20; American Public Communications Council Comments at 30-34.

Some traditional 0+ providers cavalierly imply that these results will have no public interest impact, or claim they can be addressed in other, unspecified proceedings. 7/ Such assertions are demonstrably false. The fact is, PPT providers are offering consumers more and better 0+ service options than they ever had before. Eliminating such options may reduce competitive pressure in the 0+ marketplace, but that result affirmatively harms consumers. Moreover, as the City of New York Department of Telecommunications and Energy ("City of New York") noted in its comments:

> Since the pay telephone market was opened to competition, the number of pay telephones available to consumers in the City has grown significantly. In addition to approximately 57,000 New York Telephone Company pay telephones, there are now an estimated 15,000 independently operated pay telephones in New York City. Many of the new pay telephones are located in previously unserved areas.
>
> . . .
>
> [The newly installed pay telephones] improve the quality of service and broaden the distribution of pay telephones into unserved areas. In certain areas of the City, as many as 20% of households have no residential telephone service, making the pay telephone a "lifeline" to emergency services. City of New York Comments at 10-11.

The City of New York concludes that BPP "may succeed in assuring more convenient access to OSPs at public telephones at the expense of limiting the number of telephones and new and enhanced services available to consumers. Id. at 5. This result is wholly unwarranted and unnecessary.

7/ See, e.g., Sprint Comments at 27-28.

III. CONCLUSION

Since the record shows that access code dialing already provides consumers the ability to select their carrier of choice in most instances, and will become ubiquitously available in the time it will take to deploy BPP, every penny spent on BPP is a deadweight efficiency loss and an unnecessary burden on rate-payers. Imposing such costs on the economy and on consumers of "0" services makes no sense whatsoever. Therefore, the Commission should terminate the instant rulemaking proceeding and dismiss the Bell Atlantic BPP petition from which it arises.

Respectfully submitted

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August 27, 1992

<u>CERTIFICATE OF SERVICE</u>

I, Courtenay P. Adams, certify that on this 27th day of August 1992, a true copy of the foregoing "Reply of Intellicall, Inc." was delivered by hand to the following:

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